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In re Application of  
ROSILIO, Charles *et al*  
Application No.: 09/914,455  
Filing Date: 06 March 2000  
Attorney's Docket No.: 4464  
For: METHOD FOR PRODUCING A TEMPLATE  
OF SEQUENCES OF CHEMICAL OR  
BIOLOGICAL MOLECULES FOR A  
CHEMICAL OR BIOLOGICAL ANALYSIS  
DEVICE

**DECISION**

This is a decision on the "Renewed Petition to Withdraw the Holding of Abandonment" filed 01 July 2005. No fee is required.

**BACKGROUND**

On 27 August 2001, applicant filed papers to enter the national stage of PCT/FR00/00550 which included a preliminary amendment.

On 19 October 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration and surcharge fee was required. A two-month time period for response was set with extensions of time available.

On 31 January 2002, a declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee were provided.

On 21 February 2002, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) indicating that a CRF sequence listing diskette was required. Applicants were given one month, or any time remaining in the Form PCT/DO/EO/905 mailed 19 October 2001, whichever was longer.

On 29 April 2002, applicants filed a CRF sequence listing diskette.

On 06 June 2002, the Raw Sequence Listing Error Report from the Scientific and Technical Information Center (STIC) indicated that the diskette filed was unreadable.

On 01 August 2002, the DO/EO/US mailed another Notification of a Defective Response (Form PCT/DO/EO/916) indicating that the CRF sequence listing diskette was damaged or unreadable. Applicants were given one month, or any time remaining

in the Form PCT/DO/EO/905 mailed 19 October 2001, whichever was longer.

On 27 August 2002, applicants filed a response which included a substitute CRF sequence listing diskette and hard copy of the sequence listing.

On 14 October 2004, the Raw Sequence Listing Error Report from the STIC indicated that the diskette filed 27 October 2002 contained errors.

On 23 December 2004, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

On 28 February 2005, applicants submitted the petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, a copy of the documents filed 27 August 2003 including a new CFR diskette, and a date-stamped postcard receipt for the 27 August 2003 filing.

On 03 March 2005, the Raw Sequence Listing Error Report from the STIC indicated that the diskette filed with the subject petition also contained errors.

On 04 May 2005, a decision dismissing applicants' petition was mailed.

On 01 July 2005, applicant submitted a renewed petition to withdraw the holding of abandonment along with a new CRF sequence listing diskette and requisite statement to support filing in accordance with 37 CFR 1.821 - 1.825.

On 07 July 2005, the STIC indicated that the CRF sequence listing diskette was entered into the database.

### **DISCUSSION**

In the renewed request to withdraw the holding of abandonment, applicants argue: (1) the definition of "unreadable" in the Form PCT/DO/EO/916 is open to interpretation; and (2) the Office failed to provide detailed information on the deficiency of the CRF diskette. Applicants included a new CRF sequence listing diskette which has been found to be technically good and entered into the database.

However, a further review of the file reveals that the above-captioned application was improperly treated by the Office as a filing under 35 U.S.C. 371. In the papers filed 27 August 2001, applicant submitted a preliminary amendment which states, in part:

It is requested that the application be amended as follows. This application is a continuation of PCT/FR00/00550 filed March 6, 2000.

The official USPTO Notice published in the Official Gazette at 1077 OG 13 (April 14, 1987) entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371, (the National Stage of PCT)" states, in part, that: "[i]f there are any conflicting instructions as to which section of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111."

Here, the preliminary amendment contains conflicting information which should have made this a filing under 35 U.S.C. 111(a).

### **DECISION**

Since this application is no longer a national stage application, the following forms are hereby **VACATED**.

The Form PCT/DO/EO/905 mailed 19 October 2001;  
The Form PCT/DO/EO/916 mailed 21 February 2002;  
The Form PCT/DO/EO/916 mailed 01 August 2002; and  
The Form PCT/DO/EO/909 mailed 23 December 2004.

For the reason discussed above, applicants' petition to withdraw the holding of abandonment is **DISMISSED** as **MOOT**.

This application will be forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a) with a filing date of 27 August 2001.



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